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TO: All Massachusetts Ambulance Services
FROM: Tracy A. Miller, Deputy General Counsel, Director of the Privacy and Data Access Office
DATE: March 11, 2009
RE: HIPAA authorizes Ambulance Services to disclose protected health information to organ banks for organ donation purposes without patient authorization

The New England Organ Bank recently informed the Department of Public Health that there continues to be confusion among ambulance services regarding whether the Health Insurance Portability and Accountability Act (HIPAA) precludes services from providing trip records to Organ Procurement Organizations without obtaining patient authorization. **This advisory is to inform all ambulance services¹ that HIPAA specifically allows the disclosure of such information, without patient (or his or her representative) authorization, for the purpose of facilitating organ and tissue donation.** We are told that this common misunderstanding often leads to significant delays before organs and tissue can be placed, and are issuing this Advisory to correct any confusion.

45 Code of Federal Regulations (CFR) §164.512(h) of the HIPAA Privacy Rule specifically allows health care providers to "disclose protected health information to organ procurement organizations ... engaged in the procurement, banking, or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation." This exception is "...intended to allow covered entities to initiate contact with organ and tissue donation and transplantation organizations to facilitate transplantation of cadaveric organs, eyes, and tissues." (Federal Register, December 28, 2000, at 82534) The ambulance trip record for a patient-organ donor contains critical information that an Organ Bank must review (and copy if donation proceeds) to meet its responsibilities. Therefore, since the trip record is necessary for coordinating organ and tissue donation and transplantation, there is no requirement that a patient or the patient's representative authorize the disclosure of a trip record to an Organ Bank.

Please share this information with all your EMS personnel and confer with your service's counsel if you have any further questions.

¹ Not all ambulance services are covered entities and subject to HIPAA. See Advisory on HIPAA and ambulance services, dated May 12, 2004, at http://www.mass.gov/Eeohhs2/docs/dph/emergency_services/ambulance_advisory_hipaa_disclosure.pdf. If an ambulance service is not a covered entity subject to HIPAA, it would not be precluded from disclosing the trip record to an Organ Bank unless restricted by service policy.